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In the
Supreme Court of the United States

STACY FRY AND BRENT FRY, AS NEXT FRIENDS OF MINOR, E.F.,
PETITIONERS,

v.

NAPOLEON COMMUNITY SCHOOLS, ET AL.,
RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE STATES OF ILLINOIS AND MINNESOTA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether petitioners' civil action seeking money damages for past violations of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 constitutes a "civil action . . . seeking relief that is also available under [the Individuals with Disabilities Education Act (IDEA)]" for purposes of the IDEA's exhaustion requirement, 20 U.S.C. § 1415(*l*).

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I

INTEREST OF THE *AMICI CURIAE*

Illinois and Minnesota submit this brief in support of Petitioners to urge reversal of the judgment of the United States Court of Appeals for the Sixth Circuit in *Fry v. Napoleon Community Schools*, 788 F.3d 622 (6th Cir. 2015). The court held that the IDEA's exhaustion provision, 20 U.S.C. § 1415(*l*), required Petitioners to exhaust their ADA and Rehabilitation Act claims alleging that Respondents violated their daughter's rights by not allowing her to be accompanied by her service dog in school.

The *Amici* States recognize the vital role that the IDEA plays in ensuring that students with disabilities receive their constitutional right to a free appropriate public education. The IDEA properly relies on the expertise of state and local educators and administrators in determining and implementing the best, individualized plan for educating each qualified student under the IDEA. In that way, the IDEA's exhaustion provision serves to guarantee that local education experts play an essential part in educating students with disabilities.

But the *Amici* States also recognize that § 1415(*l*) should not be read so broadly as to undermine the purpose and effectiveness of other statutes such as the ADA or the Rehabilitation Act. The rights afforded by and protected under these different statutory regimes are sometimes overlapping, and § 1415(*l*) should be construed in a limited manner so as not to interfere

with the efficient operation of the other laws. Therefore, the *Amici* States believe that exhaustion should not be required where the specific relief sought by civil rights plaintiffs is not available under the IDEA. Nor should exhaustion be required where the plaintiffs challenge a general pattern or policy of discrimination, as opposed to conduct that affects only the education of a particular student. Finally, exhaustion should not be required where the rights the plaintiffs seek to enforce are not related to the IDEA's core function of creating an education plan or where the expertise of school administrators that is a hallmark of the IDEA process is not required.

The *Amici* States also recognize the profound importance of service animals to students with disabilities. Students' service animals accompany them at all times, not just at school. Students for whom service animals are suitable should not face added obstacles in bringing their animals to school, as those obstacles harm the students and their families in ways that extend beyond the child's education. And accommodating a service animal does not require expertise in crafting individualized education plans. Accordingly, the *Amici* States submit that issues regarding the access provided to students with service dogs are best addressed under the ADA, not the IDEA.

SUMMARY OF ARGUMENT

Petitioners were not required to proceed though the IDEA's complex administrative process before they could bring their claims for damages under the ADA and Rehabilitation Act. The plain language of § 1415(*l*) shows a general intent not to restrict the rights and remedies available under those other civil rights statutes. Consistent with that intent, § 1415(*l*) contains a narrow exhaustion requirement that applies only in cases where the relief sought would be available under IDEA. Where, as with the claims for damages here, the relief requested could not be obtained in an IDEA proceeding, exhaustion is not required.

Nor should exhaustion be required when plaintiffs challenge a generally applicable policy of discrimination under the ADA and Rehabilitation Act. The IDEA administrative process is designed to formulate and revise a student's IEP. This focus on the educational needs of a particular student sets the IDEA apart from other civil rights statutes that are designed to eliminate discriminatory practices and provide systemic remedies where needed.

Exhaustion also should not be required when the complaint seeks to vindicate rights that are unrelated to the core IDEA purpose of creating an IEP for students with disabilities, or where the expertise of school administrators, which is a hallmark of the IDEA process, is not required. Requests to accommodate a

service dog in a school, in particular, is better handled under the ADA than through the IEP process.

ARGUMENT

I. The IDEA's Exhaustion Requirement Does Not Apply To Petitioners' Claims.

The IDEA serves a vital role by creating a process for crafting education plans for qualified students with disabilities. It effectuates this aim by enacting a comprehensive administrative procedure for education experts and parents to work together to create an individualized educational program (IEP) for each eligible student. But, as the IDEA itself recognizes, Congress did not intend for that statute to "restrict or limit the rights, procedures, and remedies" available under other statutes, including the ADA and the Rehabilitation Act. 20 U.S.C. § 1415(*l*). Congress sought to harmonize the IDEA with these broad remedial statutes by providing that a party must exhaust the IDEA's administrative procedures before filing a civil action under those other laws only if that action "seek[s] relief that is also available under this subchapter." *Id.* This exception should be read as a narrow one and does not encompass petitioners' claims for damages in this case.

A. Where the complaint requests relief that may not be afforded through the IDEA's administrative process, exhaustion is not required.

As § 1415(*l*)'s plain language states, the exhaustion requirement applies only in cases where a plaintiff seeks "relief" that is also "available" under

Subchapter 2 of the IDEA. Thus, the statute's primary focus is on the relief that plaintiff seeks. The best way to determine what relief is sought in a case is to analyze the complaint and ascertain the remedies the plaintiff requests. *See* Fed. R. Civ. P. 8(a)(3) (complaint must contain "a demand for the relief sought, which may include relief in the alternative or different types of relief"). Logically, a plaintiff who does not request a certain remedy does not seek that relief within the meaning of § 1415(*l*).

The question then becomes whether the relief sought is available under the Subchapter. To answer that question, the Court should consider the structure and purpose of the IDEA. The goal of the IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE). 20 U.S.C. § 1400(d)(1)(C). The FAPE guaranteed to students is one that "emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." *Id.*; *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009) (explaining Congress enacted the IDEA to guarantee a FAPE to all children with disabilities).

This Court has explained that the "*modus operandi* of the Act is the . . . 'individualized educational program [IEP].'" *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Ed. of the Commonwealth of Mass.*, 471 U.S. 359, 368 (1985). An IEP is "a comprehensive statement of the educational needs of a [child with a disability] and the specially designed instruction and related services to be employed to meet those needs."

Id.; *see* 20 U.S.C. § 1414(d)(A)(i). The IEP is formulated by the student's IEP Team, which is composed of the child's parents, teachers, a qualified representative of the local educational agency, other individuals with expertise, and, where appropriate, the child. 20 U.S.C. § 1414(d)(B). The IEP process requires a number of steps: the child is identified as possibly needing special education and related services; the child is evaluated by a state or local educational agency; eligibility is determined; the IEP meeting is held; the IEP is written; services are provided under the IEP; the student's progress is measured and reported to the parents; the IEP is reviewed and if necessary revised by the IEP Team at least once a year; and the child is reevaluated at least once every three years. 20 U.S.C. §§ 1412(a), 1414.

A child's parents may file an administrative complaint with the local or state educational agency "relating to the identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to such child." 20 U.S.C. § 1415(b)(6). That complaint becomes the subject of "an impartial due process hearing" before the state or local educational agency, as determined by state law. 20 U.S.C. § 1415(f)(1)(A). In additional to ensuring procedural compliance, the hearing officer is to determine whether the child received a FAPE. 20 U.S.C. § 1415(f)(3)(E). If the decision was rendered by the local educational agency, any party aggrieved by the findings and decision may appeal to the state educational agency. 20 U.S.C. § 1415(g)(1).

Any party aggrieved by the findings or decision of the state agency may bring a civil action in state or federal court. 20 U.S.C. § 1415(i)(2)(A). The court hearing such action shall "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). In *Burlington*, this Court explained that the "ordinary meaning of these words confers broad discretion on the court" reviewing the matter. 471 U.S. at 369. Within this broad discretion, the type of relief that may be awarded "is to be 'appropriate' in light of the purpose of the Act." *Id.* In other words, appropriate relief is that which is necessary to provide a FAPE. *Id.* at 369-70.

This available relief focuses on ensuring that the education is both appropriate and free. For instance, in *Burlington*, this Court held that a court could in certain circumstances order a school district to reimburse parents for the cost of private special education for a child. The Court reasoned that the purpose of the statute is to provide a *free* appropriate public education, so retroactive reimbursement to parents may be a proper remedy. *Id.* at 370; *see also Florence Cty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 13 (1993) ("Moreover, IDEA was intended to ensure that children with disabilities receive an education that is both appropriate and free.").

In determining the appropriate relief under this section, "equitable considerations are relevant in fashioning relief," and the court must consider "all relevant factors," including "the appropriate and reasonable level of reimbursement that should be required." *Carter*, 510 U.S. at 16 (internal quotation

marks omitted). This Court expressly distinguished the permissible retroactive reimbursement from "damages." *Burlington*, 471 U.S. at 370-71 ("Reimbursement merely requires the Town to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP."). Damages for statutory violations are not appropriate relief under the IDEA because they are not relevant to the purpose of the statute, which is to provide a FAPE, not compensate for injuries. *See Bd. of Ed. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 189 (1982) (focus of IDEA is on "*procedures* which would result in individualized consideration of and instruction for each child") (emphasis in original).

The scope of monetary relief available under the IDEA should not be given a liberal interpretation. The IDEA is Spending Clause legislation, so any conditions attached to a State's acceptance of funds must be stated unambiguously. *See Forest Grove*, 557 U.S. at 246 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). Therefore, for relief to be authorized under the IDEA, the statute must put States on notice that they will be subject to the monetary awards in question. *Id.* (citing *Arlington Cent. Sch. Dist. Bd. of Ed. v. Murphy*, 548 U.S. 291, 304 (2006)). States are on notice that they must provide a FAPE, but they are not on notice that they are subject to other relief such as damages claims. *See id.*

In sum, § 1415(*l*) requires analysis of what relief is actually sought and whether that particular relief is available under the IDEA process. Because damages are

not appropriate relief, they are not available under the IDEA and exhaustion is not required.

B. Claims challenging discriminatory policies are not subject to the exhaustion requirement.

Examination of the complaint to determine whether the type of relief sought could be granted under Subchapter 2 of the IDEA is sufficient to resolve the question presented by the instant case. But in certain cases examination of the relief sought in the complaint will not be sufficient by itself to determine the scope of § 1415(*l*)'s exhaustion requirement.

The IEP, as its name suggests, is focused on the provision of a FAPE to a particular student through an *individualized* program tailored to that student. *See* 20 U.S.C. § 1414(d). Accordingly, the relief to be obtained under the statute is specific to the individual student. *See* 20 U.S.C. § 1415(i)(2)(C)(iii); *Burlington*, 471 U.S. at 369-70. By contrast, when a student raises a challenge to a generally applicable policy, such as a school district's policy regarding the use of service dogs (*see* Pet. App. A23), exhaustion is not necessary. Such claims do not relate primarily to any student's IEP, but rather challenge a broader discriminatory practice. Accordingly, the most appropriate remedy for such a general pattern or practice is the broad, systemic injunctive relief that is available under the ADA or the Rehabilitation Act. *See, e.g.*, *Thorpe v. Dist. of Columbia*, 303 F.R.D. 120 (D.D.C. 2014) (action by individuals with disabilities under ADA and Rehabilitation Act concerning policy of confinement to

nursing facilities); *Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362 (N.D. Ga. 2002) (class action by individuals with disabilities under ADA seeking injunctive relief against transit system). Exhaustion should not be required in these circumstances.

C. Exhaustion is not required where the claims raised seek to vindicate rights that are not predominantly based in the IDEA and do not call on the expertise of school administrators.

Certain types of relief sought in a complaint generally may be available under the IDEA, but in the context of a particular case, that relief may be unrelated to the core IDEA functions of creating an education plan and the claim may not implicate the special expertise of school administrators that lies at the heart of the IDEA's IEP process. Those claims should not fall within the exhaustion requirement. Consider, for example, a slight variation on the facts of this case where the plaintiffs seek an interlocutory and permanent injunction, alleging a violation of the ADA because a school failed to reasonably accommodate her child's disability by not permitting her to bring their service animal to school. The relief requested—an injunction requiring the school to permit the service animal—could be obtained under the IEP-review process in those circumstances where it is required for a FAPE. But requiring exhaustion would frustrate the purposes of the other statutes, contrary to Congress's clear intent.

As a starting point, the legislative history of the exhaustion provision shows that it should be read narrowly. In enacting § 1415(*l*), Congress legislatively overrode this Court's holding in *Smith v. Robinson*, 468 U.S. 992 (1982). In *Smith*, the plaintiffs claimed that the denial of a FAPE violated their constitutional rights to due process and equal protection. *Id.* at 1008-09. The Court noted that those claims were "virtually identical" to claims plaintiffs raised under the Education of the Handicapped Act (EHA), which was the precursor to the IDEA. *Id.* at 1009. The Court concluded that the EHA provided a "comprehensive scheme" to aid the States in complying with their constitutional obligation to provide public education to children with disabilities, and Congress intended children "with constitutional claims to a free appropriate public education to pursue those claims through the carefully tailored administrative and judicial mechanism set out in the statute." *Id.*

In response, Congress made clear that the IDEA is not the only avenue for challenging a school district's decision making. Section 1415(*l*) "reaffirm[s]" "the viability of section 504, 42 U.S.C. 1983, and other statutes as separate vehicles for ensuring the rights of handicapped children." H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985). Thus, § 1415(*l*) is not just an exhaustion provision, it is at the same time an "IDEA non-exclusivity provision." *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1097 (9th Cir. 2013).

As courts have recognized, the IDEA and the ADA "differ in both ends and means." *Id.* The ADA is a broad remedial statute enacted to address centuries of

discrimination in all aspects of life faced by people with disabilities. *See* 42 U.S.C. § 12101(a). Congress specifically found that discrimination against individuals with disabilities persists in areas including public accommodations, education, and access to public services. 42 U.S.C. § 12101(a)(3). The purpose of the ADA is to "invoke the full sweep of congressional authority" to "address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(4).

Title II of the ADA addresses discrimination in public services, including public schools, by prohibiting the exclusion of qualified individuals with disabilities from participation in and the benefits of services, programs, and activities of public entities. 42 U.S.C. § 12132; *see K.M.*, 725 F.3d at 1097 ("There is also no question that public schools are among the public entities governed by Title II."). Similarly, the Rehabilitation Act prohibits disability discrimination in programs receiving federal financial assistance. 29 U.S.C. § 794(a). In enacting this statute, "Congress enlisted all programs receiving federal funds in an effort 'to share with handicapped Americans the opportunities for *an education*, transportation, housing, health care, and jobs that other Americans take for granted.'" *Sch. Bd. of Nassau Cty., Fla. v. Arline*, 480 U.S. 273, 277 (1987) (quoting 123 Cong. Rec. 13515 (1977) (statement of Sen. Humphrey)) (emphasis added). These statutes therefore provide relief from discrimination and discriminatory practices in the public school setting.

To remedy such discrimination, Title II authorizes the same remedies as the Rehabilitation Act. *See* 42

U.S.C. § 12133 (incorporating 29 U.S.C. § 794a). Among other things, those statutes permit the entry of "an equitable or affirmative action remedy." 29 U.S.C. § 794a. Among other things, a plaintiff may seek an interlocutory injunction under Title II requiring a municipality to let him use his service dog in certain public places. *See Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026 (N.D. Iowa 2011). These statutes therefore allow immediate, emergency relief to prevent discrimination on the basis of a disability.

The legal focus of a claim under these statutes is different than that of a claim under the IDEA. To prove a violation of the ADA or Rehabilitation Act for failure to grant a reasonable accommodation, a student would need to demonstrate that she is a qualified individual with a disability, that the school or district receives federal assistance (for purposes of the Rehabilitation Act) and is administered by a public entity (for purposes of the ADA), and that the requested accommodation was reasonable, necessary to avoid discrimination on the basis of disability, and was denied. *See Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 751-52 (7th Cir. 2006); *see also* 28 C.F.R. § 35.130(b)(7) (defining public entity's obligation to make reasonable modifications to avoid discrimination on the basis of disability). The school's defenses would largely be restricted to an argument that the request for an accommodation posed an undue burden or required a fundamental alteration of the nature of the service, program, or activity. *See Alexander v. Choate*, 469 U.S. 287, 300 (1985) ("The obligation of an educational institution to make modifications in order to accommodate an individual with a disability does not

require the institution to make 'fundamental' or 'substantial' changes to its programs or standards."); 28 C.F.R. § 35.130(b)(7).

As opposed to these statutes, the IDEA is not a general anti-discrimination law, and "[a]t no point would the administrative process offer insight into the merits of a discrimination claim." *Ellenberg v. New Mexico Military Inst.*, 478 F.3d 1262, 1281 (10th Cir. 2007). Instead, the IDEA creates a comprehensive scheme for States and local school districts to provide a FAPE for children with disabilities, including detailed procedural guarantees regarding setting and modifying a student's IEP. *See* 20 U.S.C. §§ 1400, 1412(a)(4), 1415(b)(1).

Meanwhile, as this Court has acknowledged, the administrative IEP review process under the IDEA "is ponderous." *Burlington*, 471 U.S. at 370. Under the IDEA procedure, "administrative judicial review of a parent's complaint often takes years." *Forest Grove*, 557 U.S. at 238. A party seeking an injunction to enforce rights or to remedy discrimination that is prohibited by the ADA or Rehabilitation Act should not be expected to wait out the administrative process over the course of years. *Cf. McCarthy v. Madigan*, 503 U.S. 140, 146 (1992) ("Administrative remedies need not be pursued in the litigant's interests in immediate judicial review outweigh the government's interests in the efficiency or administrative autonomy that the exhaustion doctrine is designed to further.") (internal quotation marks omitted).

In addition, the Sixth Circuit's reasoning would require a child who happens to be covered by the IDEA to exhaust her administrative remedies to bring her service dog to school, while a child with a disability who is not covered by that statute may bring an ADA claim directly in court for an emergency injunction to allow access for her service dog. The Rehabilitation Act and the ADA define "disability" as a substantial impairment that affects one or more major life activities (including learning), a record of such impairment, or being regarded as having such an impairment. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(2). The IDEA defines "child with a disability" differently, as a child "with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities" who, based on this, "needs special education and related services." 20 U.S.C. § 1401(3)(A)(i)-(ii). The differing scope of these definitions is by design. The ADA and Rehabilitation Act broadly cover people with disabilities to ensure full access and participation in all aspects of society, while the IDEA requires education and administrative rights for a subset of children whose disabilities adversely affect their educational performance or cause educational need.

Due to the IDEA's limited coverage and the ADA's and Rehabilitation Act's expansive coverage, many school-aged children are covered by the latter statutes but not the former. These include children with disabilities who do not have an IDEA-qualifying

disability or who do not need special education or related services by reason of their disability. 20 U.S.C. § 1401(3)(A). Children with disabilities who are not covered by the IDEA because they do not need special education may nonetheless require reasonable accommodations under the ADA and the Rehabilitation Act to attend regular classes. Such accommodations might include "respiratory therapy during the day," "home or hospital tutoring during infrequent crisis situations that necessitate[ ] absence from school," or "catheterization services." Ruth Colker, THE LAW OF DISABILITY DISCRIMINATION 232 (7th ed. 2009). As noted, the ADA and Rehabilitation Act also cover children with a history or record of a disability and children who are regarded as having a disability; the IDEA does not cover these children. *Id.*

But it makes little sense to permit a child who is entitled to an ADA accommodation to go straight to court to obtain immediate relief while another a child who is entitled to the same accommodation must navigate the IDEA's lengthy administrative process to change her IEP. That is especially true where the accommodation does not require the expertise of school administrators in crafting an IEP.

Therefore, where the rights allegedly violated have a basis in another statute, do not concern the core function of creating an education plan, and do not require the expertise of school administrators, exhaustion should not be required.

II. Issues Regarding Students' Use Of Service Animals In Schools Are Better Suited To Resolution Under The ADA Than Within The IDEA's Administrative Process.

Issues regarding access to public entities or accommodations for individuals with disabilities and their service animals fall squarely within the ADA's scope. Service animals support people with disabilities in all aspects of life, furthering the ADA's goals of independence and full community participation. *See* 42 U.S.C. § 12101(a)(7). A service animal is a dog that is specifically and individually trained to perform designated tasks or work directly related to an individual's disability. 28 C.F.R. § 35.104 (providing nonexhaustive list of tasks that may be performed by service animals). The benefits conferred by service animals, particularly when paired with children with disabilities, however, extend far beyond the completion of these tasks. Service animals promote a child's well-being because they can reduce anxiety, ease social interactions, build confidence, and enhance the quality of life for both the child and the child's family. *See* Diana H. Rintala et al., *Effects of Assistance Dogs on Persons with Mobility or Hearing Impairments: A Pilot Study*, 45 J. REHABILITATION RES. & DEV. 489, 490, 502; B.W. Davis et al., *Assistance Dog Placement in the Pediatric Population: Benefits, Risks, and Recommendations for Future Application*, 17 ANTHROZOÖS 130, 131 (2004).

The legislative history of the ADA recognizes that "[a] person with a disability and his or her [service] animal function as a unit and should never be involuntarily separated." 135 Cong. Rec. S10,800 (1989) (statement of Sen. Simon). To force such separation "[is] discriminatory under the [ADA]." *Id.* Courts have consistently recognized the importance of allowing service animals to accompany people with disabilities at all times—in school and out—to preserve the bond between them and maintain the dog's skills. *See, e.g.*, *Sullivan ex rel. Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947, 960 (E.D. Cal. 1990) (granting preliminary injunction requiring school to allow student to bring service dog to school because, "[b]y denying access to plaintiff's service dog, defendants have greatly diminished the dog's usefulness to plaintiff"); *Sak*, 832 F. Supp. 2d at 1045 (granting preliminary injunction to require a city to permit a person with disability to maintain a pit bull as a service animal where the plaintiff claimed "taking away his service dog inflicts injury on him comparable to taking away his wheelchair, which is also a necessity"); *Alboniga v. Sch. Bd. of Broward Cty. Fla.*, 87 F. Supp. 3d 1319, 1341 (S.D. Fla. 2015) ("there is no factual dispute that separating A.M. from his service animal during the school day would have a detrimental impact on the human-animal bond and would diminish the animal's responsiveness and effectiveness outside of the school setting").

While service animals provide significant benefits to students, they often present only modest administrative issues for schools, obviating the need for the IDEA process. The routine scheduling issues that may arise when granting such access to a service animal do not call upon school administrators' expertise. For that reason, they can be handled outside of the IDEA's administrative processes, as is the case for service-animal access in other places of public accommodation under the ADA.

School districts seeking to block service animal access have raised concerns including the health and safety of other students and teachers with allergies or phobias to service animals, anticipated difficulties with the management of the service animal, and fears that the dog will pose a distraction. *See, e.g.*, *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 247–48 (2d Cir. 2008). But schools can address such concerns through conventional planning and interventions outside of the IEP process. For instance, they can arrange class schedules to minimize exposure of students and teachers with allergies and fears, just as a school may need to take certain steps to ensure a class schedule with accessible classrooms for a student who uses a wheelchair. If the student requires that the school assist with the service animal during the day, schools can plan and coordinate with their staff, just as schools plan and coordinate to permit a student with diabetes to check her insulin during the school day. The "minor inconvenience" to a school of accommodating

the service animal should not outweigh the potential injury to a student of "both her working relationship with her dog and her dignity and self-respect" when her service animal is denied access. *Sullivan*, 731 F. Supp. at 961. The ADA accommodation process is the proper forum for resolving these issues.

Indeed, public entities under Title II and places of public accommodation under Title III are often called upon to modify their procedures to accommodate service animals. For example, as a place of public accommodation under the ADA, a hospital must permit service animals, but it also must balance concerns about staff and patients' allergies or fears. *See* 42 U.S.C. § 12181(7)(F). Zoos must accommodate service animals while also ensuring the safety of their own animals and visitors, particularly where natural predators of service animals are involved. 42 U.S.C. § 12181(7)(I); *see* U.S. Dep't of Justice, Civil Rights Division, Disability Rights Section, *Frequently Asked Questions about Service Animals and the ADA*, at Question 26. Day care centers must accommodate people with disabilities who use service animals while also protecting young children who may not yet understand how to safely interact with dogs and may not exercise control and caution around unfamiliar animals. 42 U.S.C. § 12181(7)(K).

In short, the valid considerations for denying access to a service animal are already addressed within the ADA framework, and that framework does not require a showing that the service animal be necessary

for the child's appropriate education. *See* 28 C.F.R. §§ 35.130(b)(7), 35.136, 35.139. The criteria to determine whether a public entity should accommodate a service animal under the ADA are limited and uncomplicated. Under the ADA, a public entity may review whether the service animal meets the regulatory definition, whether permitting the service animal is reasonable and necessary, and whether the service animal would fundamentally alter the nature of the entity's services or otherwise pose an undue burden. 28 C.F.R. §§ 35.130(b)(7); 35.136. The ADA regulations contemplate a process where a person with a disability responds to limited inquiries by the public entity when the need for the service animal is not obvious, and is then granted access with his or her service animal. 28 C.F.R. §§ 35.136(a); 35.136(f).

Accordingly, the administrative process and reliance upon educational expertise that are the hallmarks of the IDEA are neither required for nor suited to service animal decisions. It is not necessary, for instance, that the seven categories of people who compose an IEP team, 34 C.F.R. § 300.321, be consulted to decide whether the custodian or school secretary will accompany the service animal outside for relief breaks. *Cf. Christopher S. v. Stanislaus Cty. Office of Ed.*, 384 F.3d 1205, 1213-14 (9th Cir. 2004) (rejecting the argument that students with autism were required to exhaust administrative remedies under IDEA, in part because "determining whether lunch and recess may be counted as instructional time in this case does not

require administrative expertise."). And, as discussed, compelling the IEP process for service animal decisions may also have the detrimental effect of delaying what should be an expedient decision and forcing students and families to wait needlessly for access.

* * *

For these reasons, the Sixth Circuit's judgment should be reversed. The exhaustion rule of § 1415(*l*) does not apply where the relief actually sought in the complaint may not be awarded under the IDEA, the complaint seeks to remedy a general policy of discrimination, or the complaint concerns the vindication of rights that are unrelated to the core functions of the IDEA and do not necessitate the expertise of administrators in devising an education plan. Issues relating to the use of service dogs in schools are best resolved under the ADA rather than the IDEA.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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